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Supreme Court of the United States

No. 92.

OCTOBER TERM, 1906.

PEOPLE'S SAVINGS BANK,

PLAINTIFF IN ERROR

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY,

AS A BOARD OF REVIEW.

No. 93.

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In Error to the Supreme Court of the State of Iowa.

Additional Brief and Argument for Plaintiffs in Error.

NATHANIEL C. GUERNSEY,
Attorney for Plaintiff in Error People's Savings Bank.
GEO. F. HENRY,
Attorney for Plaintiff in Error Des Moines Savings Bank.

Supreme Court,
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JAMES H. McKEN

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Additional Brief and Argument for Plaintiffs in Error.

Accepting the distinction repeatedly recognized by this court between the capital of the corporation and the share stock, so called, of the shareholders, the fundamental propositions asserted in the main brief of the plaintiffs in error are:

First: That the statutes of Iowa and particularly section 1322 of the code of 1897 of Iowa (printed in full on page 20 of the combined brief and argument for the plaintiffs in error in the above entitled cases), when properly construed, in fact direct the levy of a tax upon the capital of savings banks and not upon the share stock of the shareholders.

If this is so, then unquestionably in the determination

of the value of such capital for taxation, the banks were entitled to a deduction in an amount equivalent to the amount of such capital invested in United States bonds. This right was denied by the decree of the court below.

Second: If said section 1322 requires that the shares of stock owned by their shareholders be assessed and taxed to the savings banks, then, because the banks in such event would be taxed upon property which they do not own, this section would deprive them of their property without due process of law and is therefore void because in contravention of the fourteenth amendment to the constitution of the United States.

These propositions the appellants reassert. We desire in this additional brief to emphasize what has already been said as to the rule of construction applicable to the statute under consideration, and in connection with an examination of the facts in the cases already decided, to demonstrate that the case at bar is radically distinguished from the cases which have preceded it, in that here the tax is levied not against the shareholder, but directly against the bank, and is to be paid not by the stockholder or out of his funds, but by the bank out of its own funds, without reimbursement, so that the tax here, instead of being a tax against the shareholder, and in fact paid by him, is a tax against the bank, and in fact paid by it. We desire also to allude to one or two collateral matters suggested by the oral argument.

The opinion in this case has not been printed in the official Iowa reports. It is set out at page 28 of the transcript and is reported at page 867, volume 101, of the Northwestern Reporter.

POINTS.

I.

Rule of construction and its application.

The court will look to the result effected by the law, and not to its form; and if the result of the law is to impose a tax upon bonds of the United States the law is void, whatever its form may be.

Home Insurance Co. vs. New York State, 134 U. S. 594, 598;
New Orleans vs. Houston, 119 U. S. 278.

Section 1322 of the code of Iowa, properly construed, imposes a tax upon the property of the corporation and not upon the shares of the shareholder.

People ex rel. vs. Coleman, 126 N. Y. 433;
Monroe County Sav. Bk. vs. Rochester, 37 N. Y. 365.

And the manner in which the tax was levied shows that it was a tax upon the property of the corporation and it would under the decisions of the supreme court of Iowa be void as a tax against the shares.

National Bank vs. Hoffman, 93 Iowa 119.

II.

The facts in the cases already decided.

Whatever the form of the transaction, if, as a matter of fact, an assessment is made by which the value of the bank's property is determined, and upon this assessment a tax is levied which must be paid by the bank without reimbursement, the tax is a tax on the property of the bank.

Delaware & L. R. R. Co. vs. Pennsylvania, 198 U. S. 341

A review of numerous cases decided by this court and a few of the cases decided by the state courts demonstrates that in every instance where the bank is made a collecting agent the statute that has required it to pay the tax for the corporation has also contained a provision for the reimbursement of the bank and has in every instance required the shares to be assessed to the shareholders and not to the bank. The cases whose facts are reviewed are the following:

Van Allen vs. The Assessors, 3 Wall. 573;
Bradley vs. The People, 4 Wall. 459;
National Bank vs. Commonwealth, 9 Wall. 353;
Lionberger vs. Rouse, 9 Wall. 468;
Bank of Redemption vs. Boston, 125 U S. 60;
Palmer vs. McMahon, 133 U. S. 660;
Bell's Gap R'd Co. vs. Pennsylvania, 134 U. S. 232;
Aberdeen Bank vs. Chehalis County, 166 U. S. 440;
Merchants Bank vs. Pennsylvania, 167 U. S. 461;
Owensboro Nat'l Bk. vs Owensboro, 173 U. S. 664;
Cleveland Trust Co. vs. Lander, 184 U. S. 111;
Corry vs. Baltimore, 196 U. S. 466;
Frazer vs. Seibern, 16 Ohio St. 615;
St. Louis Bldg. & Sav. Assn. vs Lightner, 42 Mo. 421;
Adair vs. Robinson (Tex. Civ. App.), 25 S. W. 734;
City of Utica vs. Churchill et al, 33 N. Y. 161;
Bank of Chemung vs. City of Elmira, 53 N. Y. 49;
Batterson vs. Town of Hartford, 50 Conn. 558.

It is significant that the obligation of the bank under the Iowa statutes is not under some special statute requiring it to pay a tax levied against its shareholders, but is under the

general law requiring each property owner to pay the taxes levied against his property. Where under the Iowa statute certain corporations, not including these banks, are made collecting agents, this liability is imposed by a special enactment which provides for reimbursement.

Section 1325, code of Iowa, 1897.

The absence of the usual provisions where a corporation is a collecting agent makes it clear that the legislature did not so regard the banks under Sec. 1322.

III.

The case at bar is not ruled by the cases which have been referred to.

It can only be brought within the doctrine of these cases by holding that savings banks under section 1322 of the Iowa code are mere collecting agencies.

This conclusion is negatived by the language of the act, the fact that the obligation of the bank to pay is only the obligation of each property owner to pay taxes on his own property, the fact that the special statute does not impose any liability on the bank as a collecting agent, the fact that no provision has been made for its reimbursement, and the further fact that it is not entitled to reimbursement in the absence of a special statute.

IV.

Section 1322 discriminates against savings banks.

The owners of stock in national banks may offset against the assessment upon such stock indebtedness owing by them.

Code of Iowa of 1897, sec. 1311.
First Nat'l Bk. vs. City Council, 86 Iowa 28.

The same rule has been announced by this court under a like statute.

People vs. Weaver, 100 U. S. 539.

The right to offset is only in the person against whom the tax is levied and consequently nothing can be offset against the assessment levied against savings banks under section 1322.

Nat'l Bk. of Virginia vs. City of Richmond, 42 Fed. 877.

The statute does not authorize the banks to offset indebtedness of their stockholders, and it would not be permitted because the stockholders have the right to offset this same indebtedness against the assessments of their individual moneys and credits.

I.

Rule of Construction and its Application.

Home Insurance Company vs. New York State, 134 U. S. 594, 598.

In this case this court, referring to the inhibition upon the power of the states to tax bonds or obligations of the United States, says:

Nor can this inhibition upon the states be evaded by any change in the mode or form of the taxation, provided the same result is effected—that is, an impediment is thereby interposed to the exercise of a power of the United States. That which cannot be accomplished directly cannot be ac-

complished indirectly. Through all such attempts the court will look to the end sought to be reached, and if that would trench upon a power of the government, the law creating it will be set aside or its enforcement restrained.

In

New Orleans vs. Houston, 119 U. S. 278,

referred to and quoted from on pages 32-3 of our original brief, this court refers to the rule of construction in the following language:

Indeed, it is quite apparent from the language of the whole section, that, while nominally the taxes authorized are not to be assessed upon the capital stock of the corporation in the aggregate and as its property, yet in substance that is its effect. The taxes are assessed upon the actual shares as registered in the names of the individual shareholders, but are to be paid by the corporation *so that while the form and mode of taxation is changed, its substance remains as though assessed against the corporation by name.* (The italics are ours.)

People ex rel. vs. Coleman, 126 N. Y. 433.

In this case the Court of Appeals of New York, after referring to the confusion and trouble that has arisen because these two different things, viz: the company's capital and the shareholders' stock are denominated alike, "capital stock," reaches the conclusion that the phrase "capital stock" in the particular statute means not the share stock of the stockholders, but the capital owned by the corporation, the fund required to be paid in and kept intact as the basis of the business enterprise and the chief factor in its safety. It points out the following matters as inducing that conclusion:

First, that the tax is assessed against the corporation and upon its property, and not against the shareholders and so upon their property. Referring to the fact that every tax

is charged against some person, natural or artificial, resident or non-resident, known or unknown; that it is assessed not upon property irrespective of ownership, but against persons in respect to their property, and effects not merely a lien, but also a personal liability, the court says:

On the assessment rolls in this case appeared the name of the relator as the person assessed, and the amount of the tax became a charge against it. Of course, it could only be assessed and taxed in respect to its own property, that which in its corporate character it owned and possessed, and so it follows inevitably that the statute concerns the company's capital stock, that is, its real and actual capital, and not in any respect the share stock which it does not own and whose possessors have not been assessed.

Secondly, the court finds another reason for its conclusion in those terms of the statute which include and exclude respectively certain kinds or classes of property in the corporate ownership. Upon this point it says:

Thus the assessment is to be laid not merely upon the capital stock of the corporation, but also upon its surplus. No such explicit direction was necessary, except upon the assumption that by the words "capital stock" was meant simply "capital," which would not include surplus, and so required that it be subjected by name to the valuation. If the share stock was meant its value would include surplus and makes its specification not only needless, but confusing. But while the statute includes surplus by specific mention, it excludes franchise by omitting it. The omission of franchise is emphasized by the careful inclusion of surplus. It is fully and definitely settled that the tax imposed by the statute is not upon the franchise. But if that be so, it is not upon the share stock, for that represents the value of the corporate franchise, as a part of the total of the corporate property. And so, both by what it specifically includes and silently excludes, the statute itself informs us that by "capital stock" it means and intends the company's actual capital paid in and possessed, and not at all in any sense the share stock.

The same court in

Monroe Co. Savings Bank vs. Rochester, 37 N. Y. 365,

after referring to the settled doctrine of the Supreme Court of the United States, that government securities are exempt from assessment by the state legislatures, says:

It is a necessary result, that such exemption cannot be evaded by any mere change of form or name in the law by which the tax is imposed. If, in fact, the tax is laid upon such bonds and securities, then, by whatever form of word the imposition is laid it is illegal.

Applying these rules of construction to section 1322 of the code of Iowa, we think it is clear that while such section speaks of "shares of stock" of savings banks, yet the statute as a whole indicates that reference is in fact to the capital stock of the banks and not the separate property of the individual stockholders, which we have heretofore called the share stock of the stockholders. The court will note upon referring to such section (p. 20 of original brief of plaintiffs in error in these cases) that it is expressly provided that these shares of stock of savings banks *"shall be assessed to such banks * * * and not to the individual stockholders."* Now, paraphrasing the language of the court of appeals in the Coleman case above referred to, and having in mind that every tax must be assessed not upon property irrespective of ownership, but against persons in respect to their property, this tax is assessed against the banks and upon its property and not against the shareholders and so is not upon their property.

Such statute provides that in fixing the value of such shares the corporations shall furnish the assessor a verified statement which shall show separately the amount of capital stock and the surplus and undivided earnings, and the

assessor from such statement, so furnished by the banks, and other information he can obtain, shall find the value of such "stock" the tax including not only the capital, but also the surplus, and undivided earnings. Again paraphrasing the language of the court of appeals in the Coleman case, the assessment is to be laid not merely upon the capital stock of the corporation, but upon its surplus. No such direction was necessary except upon the assumption that by the words "shares of stock" was meant simply capital, which would not include surplus and so required that it be subjected by name to the valuation. If the share stock was meant its value would include surplus, making its specification not only needless, but confusing.

The statute in question also excludes franchise by omitting it. The omission of franchise is emphasized by the careful inclusion of surplus. Yet in levying upon the value of the share stock of the shareholders it would be necessary to include the value of the corporate franchise. Its exclusion by omission shows that the tax is not upon the value of the share stock for in arriving at such value the corporate franchise as a part of the total of the corporate property should be included. Again, exactly quoting the language of the court of appeals in the case referred to, we say: "And so both by what it specifically includes and silently excludes, the statute itself informs us that by 'shares of stock' is meant and intended the company's actual capital paid in and possessed, and not at all or in any sense the 'share stock.'"

Further, the statute specifically says in its closing words, after providing for the deduction of real estate, "and the *property of such corporations* shall not be *otherwise* assessed." The court will note that the provision is not "and the property of such corporations shall not be assessed." This would have been the natural form of expression if the

provision of the statute were for the taxing of the property of the stockholders, that is, their share stock as distinguished from the capital stock of the corporation. The statement "and the property of such corporations shall not be otherwise assessed," plainly indicates that because the statute does make a certain provision for the assessment of the property of such corporations, it shall not be *otherwise* assessed.

Not only does section 1322 of the code of Iowa, in the light of the foregoing principles, provide for an assessment of the capital of the bank, in our judgment, but the act of the assessor and all the taxing officers shows an intention to tax the property of the corporation and not the shareholders for their stock. As the tax was assessed and placed on the book, it appeared, first, to be a tax against each bank upon "moneys and credits" of which it was the owner, and not against the stockholders. In the first notice of assessment, the notice was to the bank with respect to its property as "moneys and credits." The second notice was also to the bank; it was still an assessment of its property, but as "moneys and credits" in the case of the Des Moines Savings Bank and as "corporation stock" in the cases of the Home Savings Bank and People's Savings Bank. In none of the cases did it purport to be an assessment against the stockholders. No mention was made of the stockholders, either generally or by name, anywhere in the notices or in the tax books, and there is nothing of record in the way of assessment, levy, or tax books showing that there was any intention to levy a tax against any person other than the bank as a corporation. The Supreme Court of Iowa has held such a tax with respect to a national bank, where the act of congress required the tax to be against the shareholders on their shares, was a void assessment and levy.

National Bank vs. Hoffman, 93 Iowa 119.

In this case the tax books showed an assessment *in solido* against the bank of $5,000 as the value of its personal property. The court say (p. 121):

It is conceded that the assessor did not intend to assess any property of the bank, but his purpose was to assess the capital stock to the amount of 40 per cent of its par value. As the tax was assessed and placed on the books, it appeared to be a tax against the bank upon "personal property," of which it was the owner, and not against the stockholders. No mention was made of the stockholders, either generally or by name, and there is nothing of record in the way of assessment, levy or tax books showing that there was any intention or purpose to levy a tax against any person other than the bank as a corporation. This was upon the face of the transaction a void assessment and levy.

This case would seem to establish the proposition that the assessment now in question cannot be sustained as an assessment of the shareholders for their shares of stock.

In this connection we refer again to the cases set out in our former brief on pages 42-47, inclusive.

II.

The facts in the cases already decided.

Since it is conceded that the bonds of the United States may not be taxed, the ultimate question in every case of this character must necessarily be, is the tax in fact a tax upon the property of the bank? And we submit that whatever the form of the transaction, and whatever the effort be to disguise its real character, if the amount of the tax is ascertained by the levy of a fixed percentage upon an amount, determined by an assessment to be equal to the value of the bank's property, and if this tax is actually exacted from the bank, without provision for its reimburse-

ment, then it is a tax upon the property of the bank.

Delaware L. &c. R. R. Co. vs. Pennsylvania, 198 U. S. 341,

is exactly in point on this question. At page 353 the court says:

Now, was this tax, in substance and effect, laid upon the coal which was beyond the jurisdiction of Pennsylvania? The Supreme Court of Pennsylvania has held that a tax on the value of the capital stock is a tax on the property and assets of the corporation issuing such stock. *Commonwealth vs. Standard Oil Co.,* 101 Pa. St. 119, 145; *Fox's Appeal,* 112 Pa. St. 337; *Commonwealth vs. Delaware &c. R. R. Co.,* 165 Pa. St. 44. This court has also frequently held that a tax on the value of the capital stock of a corporation is a tax on the property in which that capital is invested, and in consequence no tax can thus be levied which includes property that is otherwise exempt. *Bank of Commerce vs. New York City,* 2 Black. 620; *Bank Tax Case,* 2 Wall. 200; *Pullman's Car Co. vs. Pennsylvania,* 141 U. S. 18, 25; *Fargo vs. Hart,* 193 U. S. 490, 498, 499.

Turning now to the bank cases heretofore decided, their facts show that heretofore no statute has attempted to assess the shares to the bank; that the assessment has invariably been against the shareholders; and that in every case where the bank has been required by statute to pay the tax in the first instance, statutory provision has been made for its reimbursement, so that it has become a mere collection agent, and has not in fact been required to pay the tax.

Van Allen vs. The Assessors, 3 Wall. 573,

is the leading case. The law of New York there in question provided (page 577) that all the *shares* in any of the banking associations in that state organized under the act of congress, held by any *person or body corporate* shall be included in the valuation of the personal property of such

person or body corporate, etc. The assessors at Albany (page 578) "assessed *one Van Allen* for fifty shares owned by him of the capital stock of the First National Bank of that city and *assessed all the other shareholders* in like manner for theirs."

Because this was an assessment of shares to the shareholder the court held that it was not a tax upon the capital of the bank; holding the statute invalid, however, because it discriminated in favor of state banks.

People vs. Commissioners, 4 Wall. 244,

involved the following New York statute:

Section 1. No tax shall hereafter be assessed upon the capital of any bank or banking association organized under the authority of this state or of the United States; but the *stockholders* in such banks and banking associations *shall be assessed* and taxed on the value of their *shares* of stock therein; said *shares* shall be included in the valuation of the personal property *of such stockholder* in the assessment of taxes at the place, town, or ward where such bank or banking association is located, and not elsewhere, whether the said stockholder reside in said place, town, or ward, or not.

Note that this expressly prohibits a tax upon the capital of the bank and taxes the shares to the stockholders. On this question the case follows *Van Allen vs. The Assessors.*

In

Bradley vs. The People, 4 Wall. 459,

the shares were taxed to the shareholders. In a very brief opinion the court states that the statute is substantially like that involved in

Van Allen vs. The Assessors,

and follows the latter case.

National Bank vs. Commonwealth, 9 Wall. 353,

is the first case affirming the proposition that the tax may be collected through the bank.

The court states on page 360 that the Kentucky law in question

was intended to tax the *shares* of the stockholders, and that if no other provision had been made the amount of the tax would have been *primarily collectible of the individual or corporation owning such shares* in the same manner as other taxes are collected from individuals.

The requirement that the bank in the first instance pay the tax is sustained solely on the ground that the bank is merely a collecting agency. No question under the fourteenth amendment was made in this case, and in fact the case was decided in this court in December, 1869, and so must have arisen prior to the ratification of the fourteenth amendment which was proclaimed July 28, 1868.

Lionberger vs. Rouse, 9 Wall. 468,

arose under a statute of Missouri, under which the shares were assessed to the individual, containing an express provision for the reimbursement of the bank, the law as to this question being as follows:

> The tax assessed on shares of stock, embraced in said list, *shall be paid by the corporations respectively, and they may recover from the owners of such shares the amount so paid by them,* or *deduct the same from dividends accruing on such shares.*

Bank of Redemption vs. Boston, 125 U. S. 60,

arose under a statute of Massachusetts which was held to be valid. This statute expressly required the shares to be assessed to the owners thereof, saying on this subject (page 61):

Sec. 8. All shares of stock in banks, whether of issue or not, existing by authority of the United States or of the commonwealth and located within the commonwealth, *shall be assessed to the owners thereof.*

It required the corporation to pay the tax in the first instance, but it expressly provided for its reimbursement, and for a lien on the stock. In this connection the provision of the statute is:

The shares of such banks or other corporations shall be subject to the tax paid thereon by the corporation or by the officers thereof, and the corporation and the officers thereof shall have a lien on all the shares in such bank or other corporation, and on all the rights and property of the shareholders in the corporate property for the payment of said taxes.

The main question in this case was one of discrimination. The question of the rights of the bank as against the shareholders is not discussed in the opinion.

Palmer vs. McMahon, 133 U. S. 660,

arose in New York. The New York statute (page 666) expressly provides that the shares are to be taxed to the shareholders. The following is taken from the portion of the statute set out at page 6[illegible]

The *stockholders* in every bank, banking association or trust company, organized under the authority of this state, or of the United States, *shall be assessed and taxed* on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholders.

The bank was not required to pay the tax, so that no question of its reimbursement arose.

Bell's Gap Railroad Co. vs. Pennsylvania, 134 U. S. 232,

arose in Pennsylvania. There, bonds or other securities of corporations are taxed at three mills on the dollar of their par value. The procedure was as follows:

If the treasurer of a corporation fails to make return of its loans, as required by law, the auditor general makes out and files an account against the company, charging it with the tax supposed to be due. This account, if approved by the state treasurer, is served upon the corporation, which must pay the tax within a specified time, or show good cause to the contrary. If it objects to the tax, it is authorized, in common with all others who are dissatisfied with the auditor's stated accounts, to appeal to the court of common pleas of the county where the seat of government is (at present Dauphin county), which appeal is served on the auditor general, and by him transmitted to the clerk of said court, to be entered of record, subject to like proceedings as in common suits. A declaration is then filed on the stated account in behalf of the state, and the cause is regularly tried.

The railroad having failed to make a return, an account was made out against it, an appeal taken, and a declaration filed and the cause tried. On page 239 the court says:

That the corporation is taxed for property it does not own. This objection is not true in point of fact. The corporation, as the debtor of its bondholders, holding money in its hands for their use, namely, the interest to be paid, is merely required to pay to the commonwealth out of this fund the proper tax due on the security. *The tax is on the bondholder, not on the corporation.* This plan is adopted as a matter of convenience, and as a secure method of collecting the tax. That is all. It injures no party. It certainly does not infringe the Constitution of the United States by making one party pay the debts and support the just burdens of another party, as is implied in the objection.

Note that the opinion in sustaining the tax finds that it is a tax on the bondholder and that it is paid out of the money of the bondholder, recognizing the fact that if it

were paid out of the money of the bank the tax would be void.

In

Aberdeen Bank vs. Chehalis County, 166 U. S. 440,

the statute provided for the reimbursement of the bank. We make the following excerpt from the opinion:

If this section stood alone there might be ground for the contention that it contemplates taxation of the capital of the bank. But section 23 of the statute provides that "each bank and banking association shall be liable to pay any taxes assessed against them as the agent of each of its shareholders, owners or owner under the provisions of this act, and may pay the same out of their individual profit account or charge the same to their expense account, or to the accounts of such shareholders, owners or owner in proportion to their ownership.

In

Merchants Bank vs. Pennsylvania, 167 U. S. 461,

the statute first provided that all banking institutions, state or national, might elect to collect from the shareholders eight mills on the dollar upon the par value of all shares and pay the same into the state treasury; and provided further, that if the banks did not avail themselves of this election, they should furnish a verified statement setting forth the number of shares and their actual value and that thereupon these shares should be assessed. There is nothing that requires the payment of the tax by the bank or contemplates the assessment of the shares to the bank.

Owensboro National Bank vs. Owensboro, 173 U. S. 664,

did not involve the taxation of shares, but involved the collection of certain so-called franchise taxes. This case

we have quoted from at length in our brief in answer to the claims made for the doctrine of equivalency.

In

Cleveland Trust Co. vs. Lander, 184 U. S. 111,

the tax was against the shareholders upon their shares. This is more fully set out in the opinion of the Supreme Court of Ohio than in the opinion here.

In

Corry vs. Baltimore, 196 U. S. 466,

the tax was upon the owners of the shares and the corporation was the mere collecting agent. The opinion says:

The statutes undoubtedly impose upon a Maryland corporation the duty of paying for and on account of the owners the taxes assessed in respect of the shares, and compel such payment without reference to the dividends, *giving to the corporation a lien upon the shares of stock, and entitling the corporation, when it pays the taxes, to proceed by a personal action to recover the amount paid.*

As to the character of the tax, it quotes the following from a decision by the Supreme Court of Maryland:

But the tax is not a tax upon the stock or upon the corporation, but upon the owners of the shares of stock, though the officers of the corporation are made the agents of the state for the collection of the state tax. It is not material what assets or other property make up the value of the shares. Those shares are property, and under existing laws are taxable property. They belong to the stockholders respectively and individually, and when for the sake of convenience in collecting the tax thereon, the corporation pays the state tax upon these shares into the state treasury, it pays the tax not upon the company's own property, nor for the company, but upon the property of each stockholder and for each stockholder respectively, by whom the company is entitled to be reimbursed. Hence

when the owner of the shares is taxed on account of his ownership and the tax is paid for him by the company, the tax is not levied upon or collected from the corporation at all.

This review of the cases decided by this court discloses no case where the right to tax the shares of the shareholder to the corporation has to any extent been recognized. The limit to which the cases go is to establish the right to make the corporation a collecting agent. And in every such case the right to reimbursement is recognized. The term collecting agent, and the right to reimbursement are consistent only with the theory that the tax is levied against someone other than the corporation, from whom the corporation is entitled to reimbursement for payments made for his account.

There is another significant distinction between the statutes under consideration and the Iowa statute. Where a corporation as a collecting agent pays the tax of another it is by virtue of some special statutory requirement. The statutes of Iowa contain no requirement of this kind as to taxes assessed under section 1322 of the code. The obligation of the bank to pay these taxes is predicated upon the general provisions of the Iowa statutes which make all taxes levied upon property the personal obligations of the owners of the property and require them to pay such taxes. On the contrary where corporations by the law of Iowa are required as collecting agents to pay taxes assessed to their stockholders it is by virtue of a special provision, which does not include these banks. This provision is section 1325 of the code of Iowa, set out at page 22 of our opening brief. As a matter of convenience we repeat it here:

The corporations described in the preceding sections shall be liable for the payment of the taxes assessed to the stockholders of such corporations, and such tax shall be

payable by the corporation in the same manner and under the same penalties as in case of taxes due from an individual taxpayer, and may be collected in the same manner as other taxes, or by action in the name of the county. Such corporations may recover from each stockholder his proportion of the taxes so paid, and shall have a lien on his stock and unpaid dividends therefor. If the unpaid dividends are not sufficient to pay such tax, the corporation may enforce such lien on the stock by public sale of the same, to be made by the sheriff at the principal office of such corporation in this state, after giving the stockholders thirty days' notice of the amount of such tax and the time and place of sale, such notices to be by registered letter addressed to the stockholder at his postoffice address, as the same appears upon the books of the company, or is known by its secretary.

Here is a recognition by the legislature of Iowa of the necessity for a special provision to make a corporation a collecting agent and also of its right to a lien to protect the advances it is required to make; the absence of both of these features from the law as to savings banks demonstrates that they were not treated as belonging to this class.

The cases in the state courts accord with those decided here.

Frazer vs. Seibern, 16 Ohio St. 615,

is a case where the tax was levied against the shareholders upon their shares of stock.

A case showing that the Missouri statute contemplated that the shares should be assessed to the shareholder and that the bank should be a mere collecting agency, entitled to reimbursement, as well as that an assessment such as the one at bar, is in fact one on the property of the bank as distinguished from the property of the stockholder, is

St. Louis Building & Savings Association vs, Lightner, 42 Mo. 421.

The proper officers of the corporation made the required

statement of the capital, etc., and deducted a certain sum as representing the value of the United States bonds held by the corporation. The assessor levied the taxes upon the part of the capital thus invested in United States bonds, separately, as "shares of stock in incorporated companies." The court says:

> This was clearly an assessment against the corporation in respect of its capital stock and nothing more. * * *
>
> But the defendant contends this was an assessment and levy of taxes upon "shares of stock" under the provisions of the revenue act of 1863. These provisions contemplate an assessment of shares of stock held and owned by individual owners. *These persons are made taxable by law in respect of the shares of stock owned by them* in the corporation, but the act, instead of requiring them personally to give in a list for taxation made it the duty of the president or other chief officer of the corporation, when called upon by the assessor, to deliver to him "a list of all shares of stock held therein, and the names of the persons" who held the same. The manifest object of this provision was that the assessor might be thus provided with authentic information as to the persons who owned shares of stock in the corporation in order that the shares might *be properly assessed against them.* There would be no rational meaning in any other construction. *In this case there was no attempt to assess shares of stock against the persons owning them. The assessment was made against the corporation,* the assessor being of the opinion that the government bonds were subject to taxation, either as shares of stock or as a part of the capital stock of the corporation. It was called "shares of stock" but the thing intended must have been capital stock and could have been nothing else. To call this "shares of stock" would be simply an irrational use of words. Things are not changed by giving them wrong names. The statute itself is expressed in vague and indefinite terms.' The twentieth section provides that the taxes assessed on shares of stock against the persons owning them, shall be paid in the first instance by the corporation, to be then recovered by the corporation from the owner of the shares or deducted from the dividends accruing on such shares. Whatever might be said of this mode of col-

lecting taxes, we are not now required to give an opinion upon its operation, effect, or constitutionality. It is enough for all the purposes of this case that there was no assessment nor any attempt at an assessment of taxes in the manner contemplated by the special provisions.

Other cases where the tax is assessed directly to the shareholders are:

Adair vs. Robinson, (Texas Civ. App.), 25 S. W. 734;
City of Utica vs. Churchill et al, 33 N. Y. 161, 228;
Bank of Chemung vs. City of Elmira, 53 N. Y. 49;
Batterson vs. Town of Hartford, 50 Conn. 558.

There is not a reported case, either in this court or in the state courts, that is not in harmony with the case to which reference has been made.

III.

The case at bar is not ruled by the cases which have been referred to.

To bring the instant case within the doctrine of the cases that have been referred to is possible only upon the theory that under section 1322 of the Iowa code a savings bank is a mere collecting agency. That this theory is unsound is completely demonstrated by the following considerations:

(a) The language of the law requires the assessment to be made against the bank and not against the shareholders. There is therefore no debt to be collected by this agency. It would be irrational to say that the bank was a collecting agency to collect from itself.

(b) The obligation of the bank to pay this tax grows out of the general statute fixing the obligation of all tax

payers. This is an obligation common to every tax payer and is not the obligation of a collecting agent.

(c) The only section of the Iowa code, section 1325, imposing a liability upon corporations to pay taxes as collecting agents excludes savings banks.

This section is accurately drawn so as to impose that obligation only in cases where the tax is assessed against the stockholder and where, therefore, the obligation would be the obligation of the stockholder alone in the absence of such a statute. Under section 1322 because the assessment is made against the bank there is no obligation on the part of the stockholder; and as the intention of the legislature was to levy this tax directly against the bank, the omission of the special legislation necessary to require a corporation to pay the debt of another was entirely consistent with the general scope of this statute.

(d) No provision is made for the reimbursement of the savings banks, notwithstanding the fact that section 1325 provides for reimbursement and a lien in all cases where corporations are made collecting agents.

This is also consistent, because the law requires the bank to pay the tax itself.

(e) Savings banks have not in the absence of an express provision a right to reimbursement for payments made under section 1322. It was conceded upon the former oral argument of this case that there is no express statutory right in the savings banks of Iowa to demand reimbursement from their stockholders for the amounts paid by them as taxes under section 1322. It is equally clear that there is no implied or common law obligation on the part of the stockholder to reimburse the bank under such circumstances. Such an obligation must inevitably be predicated upon the allegation that the bank has paid

a debt of the stockholder under circumstances giving it an implied right to reimbursement. But here there is no debt of the stockholder. This is demonstrated by the fact that if suit were brought by the state against the stockholder, or if an effort were made to distrain the property of the stockholder, to collect this tax the stockholder could set up, first, that no assessment had ever been made against him; second, that no tax had been levied against him, and third, that there is no law of the state of Iowa under which such an assessment or levy could be made. The fact that it ought to be, is one of the reasons why this law is invalid.

When the bank pays these taxes it does not pay a debt which is the debt of the shareholders, because the law does not provide that the taxes shall be levied against the shareholders, and there is nothing in the statutes which impose upon the shareholders any obligation to pay these or any other taxes except those assessed against them, upon notice, and with certain opportunities to be heard and to appeal.

It is clear, therefore, that there can be no implied right in the bank to reimbursement.

Such an implied right if it existed would, without a lien on the stock, be of absolutely no practical consequence. Upon the assessments made as of January 1st in each year, taxes are levied in September, and become delinquent April 1st and October 1st in the succeeding year. If a bank is assessed on stock owned by A January 1, 1907, it has no assurance that A will own the stock, or be solvent, or within reach in October, 1908, when the second payment of taxes is made. The considerations to which we have called attention render impossible the conclusion that it was the purpose of the legislature of Iowa by section 1322 of the

Iowa code to make savings banks merely collection agents as to these taxes.

IV.

Section 1322 discriminates against savings banks.

Our purpose here is to show that under the decision of the Supreme Court of Iowa here complained of a manifest discrimination and injustice is done the holders of stock in savings banks, which, it would seem, could not have been within the contemplation of the legislature of Iowa. We think it is only necessary to compare the statutory provisions with respect to holders of stock in national banks and state banks, for it can hardly be seriously contended that the legislature of Iowa ever meant to discriminate against the holders of stock in its own banks, both state and savings.

That shares of stock in banks are "credits" of the shareholder has been determined by the Supreme Court of Iowa. This was admitted by counsel for the defendant in error on oral argument in this case, and will not be contradicted by them in any reply which shall be made to this argument.

It has been repeatedly held by the Supreme Court of Iowa that the holder of stock in a national bank may set off against his assessment upon such stock, indebtedness owing by him, because of the statute allowing the setting off of debts against credits for the purposes of taxation.

First National Bank vs. City Council, 86 Iowa 28.

The same rule was announced by this court under a statute of the state of New York in

People vs. Weaver, 100 U. S. 539.

It was conceded by counsel for defendant in error upon

the oral argument before this court that under section 1322 of the code of Iowa and other statutes relating to the subject of taxation of bank shares no opportunity is given to the holder of shares of stock in state or savings banks to deduct the debts of such holders from the levy made against the bank itself under section 1322. We speak of this concession not as a matter of comment, for it could not be avoided. We refer to it only as obviating the necessity for any argument on our part upon this proposition. The question was asked in the course of the oral argument upon the former submission of this case, whether such deduction had been asked in this particular case and refused. We stated then, as we state now, that no such deduction was asked, and submit that no such deduction would be possible. The assessment was against the bank *in solido*. One stockholder might have $1,000 of stock and no deduction for debts; another stockholder might have $2,000 of stock and $500 of debts to be deducted from an assessment if made against him. The shares of stock were assessed against the bank in a lump sum, and the credit for deduction would necessarily be in a lump sum. This deduction would not be distributed pro rata, but would necessarily have to be figured out by the bank and distributed where it belonged. No such system is created by the statute, and that it could not have been in contemplation by the legislature is shown by the fact that the assessment is not against the shareholders.

In

National Bank of Virginia vs. City of Richmond, 42 Fed. 877,

referred to in our brief, pp. 43-4, where the form of assess-

ment was very similar to the assessments in the cases now before the court, the court said:

By the law of Virginia, every person assessed for a tax upon his personal property has a right to deduct from the valuation the amount of his indebtedness, so that he may be charged only with taxes on what he owns, when a balance is struck between him and his creditors. To assess the bank on all its shares *in solido* is to prevent entirely a shareholder therein from this benevolent and just provision of law.

Under section 1311 of the code of Iowa applying to the subject of deducting debts, it is only the debts of the person who is being taxed which may be offset. Certainly under the statutes of Iowa, as interpreted by the supreme court of that state, the person being taxed is the bank, for the tax is levied directly against it. There could, therefore, be no right to offset the debts of the stockholders against such a tax.

Again, if section 1322 authorizes an assessment to state and savings banks of the stock of their stockholders, then another discrimination against such banks in favor of national banks is found in section 1325, as we have already pointed out. This latter section gives to national banks the right to recover from each stockholder his proportion of the taxes so paid with a lien on his stock and unpaid dividends therefor, and does not give any such right to state and savings banks.

Section 1311 is the provision of the code of Iowa relating to the deduction of debts from assessments of moneys and credits. This section is as follows:

In making up the amount of money or credits which any person is required to list, or to have listed or assessed, including actual value of any building and loan shares, *he will be entitled to deduct* from the actual value thereof

the gross amounts of *all debts in good faith owing by him,* but no acknowledgment of indebtedness not founded on actual consideration and no such acknowledgment made for the purpose of being so deducted shall be considered a debt within the intent of this section, and so much only of any liability of such person as security for another shall be deducted as he believes he will be compelled to pay on account of the inability of the principal debtor, and if there are other sureties able to contribute, then so much only as he in whose name the list is made will be bound to contribute; but no person will be entitled to any deduction on account of any deposit or security note given in aid of the organization of a mutual insurance company for the premiums of insurance, nor on account of any unpaid subscription to any institution, society, corporation or company; and no person shall be entitled to any deduction on account of any indebtedness contracted for the purchase of United States bonds or other non-taxable property.

Under this section it is only the debts of the person who is being taxed that may be offset. Under section 1322 as construed by the supreme court of the state the tax is levied against the bank and it is the person which is taxed. Under this statute therefore, the bank would have no right to offset debts of its stockholders against the assessment against the bank. This conclusion is emphasized by the fact that these stockholders would have the right to offset these debts against their own moneys and credits and would undoubtedly insist upon so doing, and by the further fact that the law provides no means by which the bank could require the stockholders to advise it of the amount of their debts, or to aid it in obtaining any offset on account of them.

Here again the inequity arises out of the fact that the statute requires the assessment to be made against the bank, and further emphasizes the radical difference be-

tween this statute and the statutes to which we have referred, which require the assessment to be made against the shareholder.

Respectfully submitted,

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